

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ZORAN SAVIC,

Defendant-Appellant.

UNPUBLISHED

September 19, 2006

No. 261129

Van Buren Circuit Court

LC No. 04-013996-FH

Before: Sawyer, P.J., and Fitzgerald and O’Connell, JJ.

O’CONNELL, J. (*concurring in part and dissenting in part*).

I concur with the majority opinion that motor carrier inspector Paul Cliff’s testimony is admissible. However, I conclude, as did the trial court, that the testimony regarding defendant’s compliance with federal guidelines constitutes evidence necessary to provide a complete picture of disputed events and therefore is not excluded by MRE 404(b). I would affirm the decision of the lower court.

In my opinion, the trial court properly determined that the violated regulations were designed to guard against fatigue, and that defendant’s extensive violation of those regulations strongly increased the probability that he was a fatigued and imprudent driver. Therefore, the evidence falls within the category of background, contextual, and antecedent evidence that does not necessarily warrant a limiting instruction. See *People v Sholl*, 453 Mich 730, 741-742; 556 NW2d 851 (1996). But even assuming, arguendo, that the trial court was required to instruct the jury that defendant’s violation of rest-time regulations should not be used to infer that he imprudently passed the patrol vehicle, defendant fails to demonstrate that the instruction’s absence compromises the validity of the verdict. *People v Cornell*, 466 Mich 335, 363-364; 646 NW2d 127 (2002). The fact that defendant’s substantial lack of rest was incidentally a violation of federal regulations does not significantly add prejudice to the valid inference that defendant’s fatigue contributed to the accident. Because the instruction did not affect the verdict, I would not disturb it. *Id.*

I would affirm the decision of the lower court.

/s/ Peter D. O’Connell